

JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JEFF WITT and JOSEPH BIRBIGALIA,
Derivatively on Behalf of Nominal
Defendants MULLEN AUTOMOTIVE,
INC., f/k/a NET ELEMENT, INC.,

Plaintiff,

v.

DAVID MICHERY, IGNACIO NOVOA,
MARY WINTER, KENT PUCKETT,
MARK BETOR, WILLIAM MILTNER,
JONATHAN NEW, and OLEG FIRER,

Defendants,

and

MULLEN AUTOMOTIVE, INC., f/k/a
NET ELEMENT, INC.,

Nominal Defendant.

HANY MORSY, derivatively on behalf of
MULLEN AUTOMOTIVE, INC.,

Case No.: CV 22-5336-DMG (AGRx)

**ORDER CONSOLIDATING
RELATED ACTIONS, ACCEPTING
SERVICE, AND APPOINTING CO-
LEAD COUNSEL [15]**

Case No.: CV 22-7139-DMG (AGRx) ✓

1 Plaintiff,

2 v.

3
4 DAVID MICHERY, IGNACIO NOVOA,
5 MARY WINTER, KENT PUCKETT,
6 MARK BETOR, WILLIAM MILTNER,
7 JONATHAN NEW, JERRY ALBAN, and
8 OLEG FIRER,

9 Defendants,

10 and

11 MULLEN AUTOMOTIVE, INC.,

12 Nominal Defendant.
13

14
15 The Stipulation Consolidating Related Actions, Accepting Service, and
16 Appointing Co-Lead (the “Stipulation”) having been considered, and good cause
17 appearing therefor, IT IS HEREBY ORDERED that:

18 1. Defendants David Michery, Ignacio Novoa, Mary Winter, Kent Puckett,
19 Mark Betor, William Miltner, Jonathan New, Jerry Alban, and Mullen Automotive,
20 Inc. f/k/a Net Element, Inc. (the “Stipulating Defendants”),¹ waive service of the
21 Summons and Complaint in the Related Derivative Actions (to the extent that service
22 has not yet been perfected on any Stipulating Defendant) and waive any defense based
23 upon the sufficiency of service of process, provided, however, that no other defense to
24 the claims in the Related Derivative Actions, including but not limited to defenses
25 based upon lack of personal or subject matter jurisdiction, lack of standing, improper
26 venue, or a defendant having been improperly named, is prejudiced or waived by the
27

28

1 Defendant Oleg Firer is not a party to this Stipulation.

1 execution of, agreement to, or filing of the Stipulation, or by the agreement to accept
2 service in the Related Derivative Actions.

3 2. The following actions are consolidated for all purposes, including pre-trial
4 proceedings and trial, under Case No: CV 22-05336-DMG (AGRx) (hereinafter, the
5 “Consolidated Action”):

<u>Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
<i>Witt, et al. v. Michery, et al.</i>	2:22-CV-05336-DMG-AGR	August 1, 2022
<i>Morsy v. Michery, et al.</i>	2:22-CV-07139-DMG-AGR	September 30, 2022

10 3. Every pleading filed in the Consolidated Action, or in any separate action
11 included herein, must bear the following caption:

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 IN RE MULLEN AUTOMOTIVE,
16 INC. DERIVATIVE LITIGATION

Lead Case No. CV 22-5336-DMG (AGRx)

17
18 This Document Relates to:

19 ALL ACTIONS
20

21 4. All papers filed in connection with the Consolidated Action will be
22 maintained in one file under Lead Case No. CV 22-5336-DMG (AGRx).

23 5. Co-Lead Counsel for Plaintiffs Jeff Witt, Joseph Birbigalia, and Hany
24 Morsy (“Plaintiffs”) for the conduct of the Consolidated Action shall be:

25 **GAINEY McKENNA & EGLESTON**

26 Thomas J. McKenna
27 501 Fifth Avenue, 19th Floor
28 New York, NY 10017
Telephone: (212) 983-1300

1 Facsimile: (212) 983-0383
2 Email: tjmckenna@gme-law.com

3 **THE ROSEN LAW FIRM, P.A.**
4 Laurence M. Rosen (SBN 219683)
5 355 South Grand Avenue, Suite 2450
6 Los Angeles, CA 90071
7 Telephone: (213) 785-2610
8 Facsimile: (213) 226-4684
9 Email: lrosen@rosenlegal.com

10 6. Co-Lead Counsel shall have the sole authority to speak for Plaintiffs in all
11 matters regarding pre-trial procedure, trial, and settlement negotiations and shall make
12 all work assignments in such manner as to facilitate the orderly and efficient
13 prosecution of this litigation and to avoid duplicative or unproductive effort.

14 7. Co-Lead Counsel shall be responsible for coordinating all activities and
15 appearances on behalf of Plaintiffs. No motion, request for discovery, or other pre-trial
16 or trial proceedings will be initiated or filed by any Plaintiffs except through Co-Lead
17 Counsel.

18 8. The Stipulating Defendants' counsel may rely upon all agreements made
19 with Co-Lead Counsel, or other duly authorized representatives of Co-Lead Counsel,
20 and such agreements shall be binding on all Plaintiffs in the Consolidated Action.

21 9. This Order shall apply to each related shareholder derivative action
22 involving the same or substantially the same allegations, claims, and defendants, and
23 arising out of the same, or substantially the same, transactions or events as the
24 Consolidated Action, that is subsequently filed in, removed to, reassigned to, or
25 transferred to this Court. When a shareholder derivative action that properly belongs
26 as part of *In re Mullen Automotive, Inc. Derivative Litigation*, Lead Case No. CV 22-
27 5336-DMG (AGRx), is hereafter filed in this Court, removed to this Court, reassigned
28 to this Court, or transferred to this Court from another court, counsel to Plaintiffs and

1 Stipulating Defendants shall call to the attention of the Clerk of the Court the filing,
2 removal, reassignment, or transfer of any case that might properly be consolidated as
3 part of *In re Mullen Automotive, Inc. Derivative Litigation*, Lead Case No. CV 22-
4 5336-DMG (AGRx), and counsel to Plaintiffs and Stipulating Defendants are to assist
5 in assuring that counsel in subsequent actions receive notice of this Order. Unless
6 otherwise ordered, the terms of all orders, rulings, and decisions in the Consolidated
7 Action shall apply to all later shareholder derivative actions filed in this Court, removed
8 to this Court, reassigned to this Court, or transferred to this Court from another court.

9
10 10. All papers and documents previously filed and/or served in the Related
11 Derivative Actions shall be deemed a part of the record in the Consolidated Action.


12 11. Plaintiffs and Stipulating Defendants shall file a proposed schedule in the
13 Consolidated Action, within thirty (30) days of the date that the Court enters this Order,
14 and the Stipulating Defendants need not respond to the complaints in either the *Witt*
15 Action or *Morsy* Action until the date set forth in the Court's Order regarding the
16 forthcoming proposed schedule.

17 12. The Stipulation is without waiver of or prejudice to any and all claims,
18 defenses, arguments, motions, or any requests for other relief that would otherwise be
19 available to the Parties in the Related Derivative Actions.

20 13. The *Morsy* action, 2:22-CV-07139-DMG-AGR, shall be administratively
21 closed. All material documents filed in Case No. 2:22-CV-07139-DMG-AGR are
22 deemed to have been filed in the consolidated case.

23 **IT IS SO ORDERED.**

24 DATED: November 8, 2022

25 
26 DOLLY M. GEE
27 UNITED STATES DISTRICT JUDGE
28